

BOARD OF APPEALS CASE NO. 5215

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BEFORE THE

APPLICANT: Roy Moxley

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ZONING HEARING EXAMINER

REQUEST: Special Exception to allow a driveway in the B2 District to serve a CI use and variance to expand a non-conforming building; 3601 Conowingo Road, Street

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 11, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Roy E. Moxley, is requesting a special exception, pursuant to Section 267-53K of the Harford County Code, to allow a driveway to be located in a B2/Community Business District to serve a use located in the CI/Commercial Industrial District. The Applicant is also seeking a variance, pursuant to Sections 267-41D(5) and (6), to disturb the Natural Resource District (NRD), and a variance to expand the non-conforming building in a CI/Commercial Industrial, B1/Neighborhood Business District and AG/Agricultural District.

The parcel is located at 3601 Conowingo Road, Street, Maryland 21154 and is more particularly identified on Tax Map 27, Grid 1C, Parcels 46 and 207. The subject parcel consists of 8.25± acres and is split zoned CI/Commercial Industrial, B1/Neighborhood Business and AG/Agricultural. There are areas of NRD/Natural Resource District on the parcel as well. The property is entirely within the Fifth Election District.

Mr. Tory Pierce appeared and qualified as an expert civil engineer and site plan design. By referring to Ex. 9 site plan, Mr. Pierce explained that the Applicant owns and operates Moxley Welding and Fabricating on the property. The work involves repairs to large tractor/trailer rigs which currently find it difficult to enter the property and then leave without backing on to U.S. Route 1, Conowingo Road. The addition of a driveway will allow large rigs to accomplish a turn on the property and leave the parcel without the necessity of backing on to a major highway, thus alleviating a hazardous traffic condition. The Applicant has previously constructed a driveway that serves the second access to the storage and parking area on the CI parcel through the B1 parcel. Proposed is a continuation of the driveway to the rear of the existing building and proposed addition.

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The Applicant seeks to expand the existing building by addition of a 3,500 square foot addition located to the rear. The existing building does not meet setback requirements and is a non conforming use. There are two parcels that comprise the entire property. Parcel 46 is 6.34 acres and contains the driveway access. Parcel 207 is 1.71 acres and is where the existing building is located together with storage and parking areas. Because of the angle at which the existing building is placed in relation to the lot lines, the proposed 70 foot by 50 foot addition will not come any closer to property lines than exists today. Approximately one-half ($\frac{1}{2}$) of the proposed addition will be located within the 75 foot NRD buffer. Even though considered NRD, most of Parcel 207 has been previously disturbed prior to adoption of NRD regulations. Mr. Pierce described an existing outfall ditch and grade that influenced the design and location of the uses on the parcel. In conclusion, the witness indicated that disturbance of sensitive areas was minimized but could not be eliminated entirely and still provide sufficient room for large tractor-trailers to accomplish a turn around.

Mr. Roy Moxley appeared and identified himself as the Applicant in this case. Mr. Moxley stated that he has operated Moxley Welding and Fabricating on the property since 1954. Initially, he owned $\frac{1}{2}$ acre and purchased additional land in 1955. He added an addition to the initial building in 1957 and in 1972 added the 60 foot by 140 foot warehouse. In 1985 the last of the existing building was added to accommodate the work done on large trucks. The witness stated that he is not as active in the business as he once was. The addition is needed because of increased workload and the witness admitted that there is simply no other place on the parcel to locate the addition. The driveway addition will act to alleviate a traffic hazard that has existed for many years wherein trucks leaving the property had to back out onto U.S. Route 1, requiring traffic to stop in both directions on a busy road.

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Mr. Chuck Schneider appeared and qualified as an expert environmental specialist and wetland delineator. The witness stated that Parcel 46 is 100% wetland and Parcel 207 is 10% wetland, a rather unique property constraint, particularly for a property with business zoning. The witness described the extent of disturbance to the NRD anticipated by the Applicant, which was described as minimal, about 12,000 square feet. A storm water management pond will be created and will treat runoff returning clean water to the environment. The witness described these particular wetlands as immature and not significant. In the opinion of the witness the NRD will not be adversely impacted by the proposed development.

Mr. Kevin Small next appeared and qualified as an expert landscape architect and land planner. Mr. Small stated that the existing and proposed use at this location is consistent with the Harford county master Plan. In the opinion of the witness, traffic safety and water quality will both be improved as a result of the proposal. Mr. Small pointed out that if the panhandle portion of the parcel were zoned CI, the proposed driveway would be permitted as of right and no special exception would be required. In the opinion of the witness, no adverse impact will result from the proposed construction.

Mr. Anthony McClune appeared and testified that the Department of Planning and Zoning supported the Applicant's request. In the opinion of the Department, the proposed driveway will alleviate serious traffic concerns at this site. The parcel is very unique for a number of reasons including the large area of wetland and NRD, the location of naturally occurring slope and drainage areas, the location along Route 1 and the split zoning of the parcel. In the opinion of Mr. McClune and the Department, the disturbance to NRD will not create an adverse impact to the remaining NRD and mitigation techniques can be used to actually improve water quality and create a new area of functioning NRD at another location.

Two adjoining property owners appeared but did not oppose the Applicant's proposed use.

CONCLUSION:

The Applicant, Roy E. Moxley, is requesting a special exception, pursuant to Section 267-53K of the Harford County Code, to allow a driveway to be located in a B2/Community Business District to serve a use located in the CI/Commercial Industrial District. The Applicant is also seeking a variance, pursuant to Sections 267-41D(5) and (6), to disturb the Natural Resource District (NRD), and a variance to expand the non-conforming building in a CI/Commercial Industrial , B1/Neighborhood Business District and AG/Agricultural District.

Harford County Code Section 267-53K provides:

“Accessory parking areas, driveways and private roads. These uses may be granted in any district to serve a use permitted and located in another district but not permitted in the subject district, provided that:

- (1) The parking area, driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.
- (2) No charge shall be made for the parking or storage of vehicles on any parking lot approved pursuant to this provision.
- (3) Any private road or driveway shall provide access to an approved private road, county road or state road or highway.
- (4) The number of parking spaces and total parking area approved in the subject district under this section shall not exceed thirty percent (30%) of the parking spaces and area required by this Part 1 for the permitted use.”

Harford County Code Sections 267-41D(5) and (6) provide:

“Natural Resources District.

- (5) Conservation requirements. The following conservation measures are required within this district:
 - (a) All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainageways within the Natural Resources District.

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- (b) Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.
- (c) Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic areas shall not be disturbed during any development.
- (d) Any land in excess of twenty-five-percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary roads and utilities. Not more than thirty percent (30%) of any land in excess of fifteen-percent slope and less than twenty-five-percent slope shall be cleared of natural ground cover or vegetation in preparation for development.
- (e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.
- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.

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- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Hearing Examiner finds that the proposed use by the Applicant can meet or exceed the specific requirements of Section 267-53K of the Harford County Code.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

"...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied." (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner concludes that the driveway proposed by the Applicant will not result in adverse impacts at this location and will serve to eliminate a hazardous traffic condition previously associated with the legitimate existing use on this property.

The parcel is unique and the constraints imposed by these unique features, particularly the presence of large areas of NRD, constrain and limit buildable area without the need for a variance. The mitigation agreed by the Applicant will serve to improve water quality and maintain conformance with the spirit and intent of the protections accorded the NRD by the Harford County Code.

For the reasons stated herein, the Hearing Examiner recommends approval of the Applicant's requests subject to the following conditions:

1. The Applicant prepare a detailed mitigation plan to be approved by the Department of Planning and Zoning.
2. The Plan must provide mitigation in an amount equal to the amount of wetlands and undisturbed buffer impacts.
3. The Applicant shall prepare a landscaping plan to be approved by the Department of Planning and Zoning prior to the issuance of permits. The plan shall establish vegetation in the unpaved areas of disturbance.
4. A bond or letter of credit in the amount of \$2,500.00 along with a surety agreement must be provided to Harford County prior to the issuance of a grading permit. The required mitigation shall be installed within one year after completion of the proposed expansion. The bond or letter of credit shall be held for at least two growing seasons and until a plant survival rate of 75% is demonstrated.

5. The Applicant shall obtain any and all necessary permits and inspections required by County, State or Federal agencies, including but not limited to permit approvals from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.

Date: APRIL 17, 2002

**William F. Casey
Zoning Hearing Examiner**